

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Development of Nationwide Broadband Data)	
to Evaluate Reasonable and Timely)	
Deployment of Advanced Services to All)	
Americans, Improvement of Wireless)	WC Docket No. 07-38
Broadband Subscribership Data, and)	
Development of Data on Interconnected)	
Voice over Internet Protocol (VoIP))	
Subscribership)	

COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

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I. INTRODUCTION

In response to the Notice of Proposed Rulemaking (“NPRM”), released on April 16, 2007, by the Federal Communications Commission (“FCC” or “Commission”), the New Jersey Division of Rate Counsel (“Rate Counsel”) submits these brief comments on “how the Commission can continue to acquire the information it needs to develop and maintain appropriate broadband policies.”¹

A. INTEREST OF THE RATE COUNSEL IN THE INSTANT PROCEEDING.

Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial

^{1/} *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking (“NPRM”), FCC 07-17 (rel. April 16, 2007), at para. 1.

entities.² Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996. The New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and it has found that competition will "promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." The Commission's broadband policy, set forth in this and other pending proceedings, directly affects consumers' ability to access the information-rich resources of the Internet, which, in turn, affects consumers' ability to partake fully in mainstream economic and social activities.

B. SCOPE OF THE PROCEEDING

The Commission seeks comment on the following:

- How can the Commission ensure it receives sufficient information regarding the deployment and availability of broadband services, particularly in rural and hard-to-serve areas?

² / Effective July 1, 2006, the New Jersey Division of the Ratepayer Advocate is now Rate Counsel. The office of Rate Counsel is a Division within the New Jersey Department of the Public Advocate. The Department of the Public Advocate is a government agency that gives a voice to New Jersey citizens who often lack adequate representation in our political system. The Department of the Public Advocate was originally established in 1974, but it was abolished by the New Jersey State Legislature and New Jersey Governor Whitman in 1994. The Division of the Ratepayer Advocate was established in 1994 through enactment of Governor Whitman's Reorganization Plan. See New Jersey Reorganization Plan 001-1994, codified at N.J.S.A. 13:1D-1, et seq. The mission of the Ratepayer Advocate was to make sure that all classes of utility consumers receive safe, adequate and proper utility service at affordable rates that were just and nondiscriminatory. In addition, the Ratepayer Advocate worked to insure that all consumers were knowledgeable about the choices they had in the emerging age of utility competition. The Department of the Public Advocate was reconstituted as a principal executive department of the State on January 17, 2006, pursuant to the Public Advocate Restoration Act of 2005, P.L. 2005, c. 155 (N.J.S.A. §§ 52:27EE-1 et seq.). The Department is authorized by statute to "represent the public interest in such administrative and court proceedings . . . as the Public Advocate deems shall best serve the public interest," N.J.S.A. 52:27EE-57, i.e., an "interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens." N.J.S.A.52:27EE-12; The Division of Rate Counsel, formerly known as the Ratepayer Advocate, became a division therein to continue its mission of protecting New Jersey ratepayers in utility matters. The Division of Rate Counsel represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates in Federal and state administrative and judicial proceedings.

- How can the Commission improve its collection of wireless broadband Internet access services data currently collected on FCC form 477?
- Should the Commission modify the speed tier information it currently collects?
- How should the Commission collect data with respect to subscribership to interconnected voice over Internet Protocol service?³

On April 16, 2007, the FCC also concurrently adopted two related items. The FCC released a Notice of Inquiry in WC Docket No. 07-52 (“Broadband Practices NoI”), seeking comment regarding various aspects of broadband industry practices.⁴ In another proceeding, GN Docket No. 07-45, the Commission is conducting an inquiry into broadband deployment.⁵ Rate Counsel applauds the Commission’s recognition of “the critical importance of broadband services to the nation’s present and future prosperity” and its commitment “to adopting policies to promote the development of broadband services, including broadband Internet access services.”⁶

II. DISCUSSION

Rate Counsel supports fully the Commission’s efforts toward improving its data gathering procedures, and is hopeful that improved data collection and analyses will contribute to the dual efforts of the Commission and states to promote the reasonable and timely deployment

³/ *Id.*

⁴/ *In the Matter of Broadband Industry Practices*, WC Docket No. 07-52, *Notice of Inquiry*, FCC 07-31 (rel. April 16, 2007) (“Broadband Practices NoI”). Rate Counsel is also participating in the *Broadband Practices NoI*. (Comments are due June 15, 2007, and reply comments are due July 31, 2007.)

⁵/ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, *Notice of Inquiry*, FCC 07-21, rel. April 16, 2007 (“Notice”). Rate Counsel submitted initial and reply comments on May 15, 2007 and May 31, 2007, respectively, which address some of the data collection issues under investigation in this proceeding.

⁶/ NPRM at para. 1.

of affordable broadband services to all Americans.⁷ Rate Counsel recommends that the Commission expand and refine its broadband data collection, and further recommends that this process complement rather than delay progress in broadband deployment: data should be gathered not as an end in itself, but rather as a tool to design policy.

Rate Counsel looks forward to reviewing the proposals set forth in initial comments, and, presents preliminary recommendations in these comments. Rate Counsel recommends that the Commission:

- Require broadband deployment data, expressed in absolute terms (that is, the quantity of consumers with broadband access), to be provided at a granular geographic level, and also to be represented as percentages of total households and of total businesses for the relevant geographic regions.
- Require broadband providers to provide actual customer counts (or, at a minimum, within FCC-specified ranges such as “between 0 and 10,” between “10 and 50,” etc.) for each geographic area on Form 477 instead of the current threshold of “at least one subscriber.” The current metric yields insufficient information.
- Collect data on broadband availability (*i.e.*, the boundaries of broadband service providers’ territories) and the number of broadband subscribers in an area in order to allow for the calculation of a broadband take rate, which is crucial for broadband policymaking.
- Explore collaborations with states that are already gathering information on deployment gaps.
- Require separate reporting for residential and business services for all current and additional reporting requirements.
- Collect pricing information on Form 477, including whether providers offer their Internet access service on a stand-alone basis (and, if so, the “premium” for ordering the access on a stand-alone basis)⁸.

⁷/ See Rate Counsel’s initial and reply comments submitted on May 16, 2007, and May 31, 2007, respectively, regarding broadband deployment in the Commission’s “Section 706” docket. *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, Notice of Inquiry, FCC 07-21, rel. April 16, 2007.

⁸ / For example, Comcast’s monthly rates for stand-alone Internet access are \$57.95 and \$67.95, for download speeds of 6 mbps and 8 mbps, respectively. By contrast, 6 Mbps service is available to current Comcast

- Adopt additional refinements to speed tier data collection.
- Require all interconnection VoIP providers to report subscription and deployment data on Form 477.
- Revise Form 477 requirements for wireless broadband reporting to reflect more accurately subscribership based on affirmative subscription to a data plan as opposed to the purchase of a broadband-capable handset. The current data may overestimate the extent to which consumers subscribe to wireless broadband services.

Rate Counsel also recognizes that Congress is considering legislation that entails improved broadband mapping and data collection, which may enhance federal and state policy makers' ability to design and to implement policies,⁹ but cautions the Commission against awaiting Congressional direction before the Commission modifies its own data collection system. Finally, Rate Counsel urges the Commission to share routinely with state public utility commissions and state consumer advocates any information that the Commission may collect and may deem confidential, subject to appropriate proprietary treatment.¹⁰ Regular access to detailed data is critically important to states' ability to fulfill their share of the dual responsibility of broadband oversight and achieving widespread broadband deployment.

III. CONCLUSION

Rate Counsel supports the Commission's endeavors to improve its collection and analysis of the information it needs to develop and maintain appropriate broadband policies. Rate

customers for \$29.99 for the first three months, and \$42.95 thereafter.
<http://www.comcast.com/shop/buyflow/default.ashx>.

⁹/ On May 17, 2007, the U.S. House of Representatives Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce held a legislative hearing on broadband mapping and data collection. Also, on May 24, 2007, U.S. Senate Committee on Commerce, Science, and Transportation Chairman Daniel K. Inouye introduced the "Broadband Data Improvement Act," "which seeks to improve the quality of federal broadband data collection and encourages state initiatives that promote broadband deployment." U.S. Senate Committee on Commerce, Science, and Transportation Press Release, "Inouye Introduces Broadband Data Improvement Act," May 24, 2007. Among other things, the legislation directs broadband providers to report broadband availability and connections within a 9-digit zip code and directs the Census Bureau to include a question in its American Community Survey that assess levels of residential broadband (versus dial-up) subscribership.

¹⁰ / Presently, states obtain such proprietary information sporadically, such as through discovery propounded during the course of regulatory investigations.

Counsel urges the Commission to collaborate with states in its design and modification of data gathering policies. Rate Counsel urges the Commission to share any data that may be deemed proprietary with state regulators and state consumer advocates, subject to the appropriate treatment of confidential information. Finally, Rate Counsel looks forward to reviewing the other comments filed in this docket.

Respectfully submitted,

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Dated: June 15, 2007